United States Court of Appeals

for the Second Circuit

INTERVENOR'S BRIEF

74-1611

IN THE

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

B 41

No. 74-1611

REA EXPRESS, INC.,

Petitioner,

v.

CIVIL AERONAUTICS BOARD,

Respondent.

On Petition For Review Of Orders Of The
Civil Aeronautics Board

BRIEF OF INTERVENOR AIR FREIGHT FORWARDERS ASSOCIATION

LOUIS P. HAFFER

ROBERT N. MEISER

HAFFER & MEISER
Suite 607
1730 Rhode Island Avenue, N. W.
Washington, D. C. 20036

Counsel for Air Freight
Forwarders Association

September 3, 1974

4

TABLE OF CONTENTS

TABLE OF CASES, STATUTES AND AUTHORITIES CITED

Cases

Statutes and Regulations

Miscellaneous

IN THE
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

No. 74-1611

REA EXPRESS, INC.,
Petitioner,
v.
CIVIL AERONAUTICS BOARD,
Respondent.

BRIEF OF INTERVENOR AIR FREIGHT FORWARDERS ASSOCIATION

I. PRELIMINARY STATEMENT

The Air Freight Forwarders Association (AFFA), Intervenor herein, is the air freight forwarding industry trade association, and represented member forwarders in the proceedings below.

Air freight forwarders, like petitioner REA Express, Inc. (REA), are indirect air carriers of property who vigorously compete with one another as common carriers for air cargo shipments door to door in the domestic U.S. market across all weights and distances, but who utilize the direct air carriers (airlines) for the airport-to-airport or line-haul portion of each movement.

AFFA supports the termination of the exclusive so-called "air express" monopoly service of REA and the nation's airlines, as directed by Respondent Civil Aeronautics Board (CAB or "Board") in the orders here under review. At the same time, AFFA does not oppose the award by the CAB to REA of competitive air freight forwarder authority. The combined effect of the challenged Board orders would be simply to place REA and the air freight forwarders on a plane of competitive equality.

II. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW.

1. Were the Board's Orders terminating the "air express" monopoly and its subsidiary supportive findings based on substantial evidence; arbitrary, capricious, and an abuse of discretion, and otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority or limitations, or short of statutory right; or without observance of procedure required by law?

2. Is the exclusive REA-airline pooling arrangement violative of the U.S. anti-trust laws, and, if so, did the Board properly strike the arrangement down under the standards of such cases as FMC v. Svenska Amerika Linien, 390 U.S. 238 (1968)?

3. Did the Board properly and rationally conclude on the basis of the record that the public interest would no longer be served by a continuation of the exclusive REA "air express" monopoly?

III. COUNTERSTATEMENT OF THE CASE

In the Briefs of REA and supporting Intervenors, the picture of "air express" presented is of a uniquely high quality service reaching every hamlet and village of the nation giving individual handling and the most expedited next-flight-out service to the smallest of packages, and all well below the price of other available services; in short, a virtual utopia for the air cargo shipper.

The CAB, as the villain in the piece, is said to have ordered the dismantling of this wonderful machine, and for no good reason.*/

Even a cursory analysis of the record, however, will disclose that there is little, if any, resemblance of the pictures presented by REA and its supporters to reality.

As the Board has found, there is generally little to distinguish the relationships between the forwarders and REA, on the one hand, and the shipping public, on the other. Both REA and the forwarder pick up

---

*/ The Orders here under review which terminated so-called "air express" service were entered in the Express Service Investigation below, Docket 22388 (hereinafter referred to as the "Service" case. REA also seeks review of certain Orders in the Investigation of Air Express Rates case below, Docket 22387 (hereinafter referred to as the "Rates" case.

shipments at the shipper's door pursuant to published tariff rates and charges and deliver such shipments at destination at approximately the same speed and in the same markets for the same commodities, with some minor variations, as exist in the forwarding industry itself from company to company. It is only the relationship between REA and the airlines that is different. And even as to that, REA grossly distorts the facts of record.

Thus, entirely omitted from the picture is the threshold fact that the whole "air express" scheme as authorized in the past involves an agreement among all of the dozens of the airline competitors (1) not to compete among themselves for a 9 million shipment portion of the highly competitive air cargo market, (2) to insulate that same part of the market from the competition of hundreds of CAB licensed indirect air carriers by the refusal to deal with all save one, and (3) to negotiate the costs to be paid by the single chosen ground carrier entirely without regard to the statutory tariff standards and procedures of the Act and for all practical purposes out of view of the shipping public and its governmental representatives, whereas the airline costs of REA's hundreds of other competitors are determined under the aforementioned statutory provisions of the Act. (Total air express charges are governed by the tariff provisions of the Federal Aviation Act of 1958, as amended (hereinafter cited as the "Act"), specifically, Sections 403, 404 and 1002 thereof (49 U.S.C.A. §§ 1373, 1374 and 1482 (1963 and 1974 Cum. Supp.)), whereas the divisions of the total as between REA and the airlines have been negotiated simply by agreement of the parties pursuant to Section 412 of the Act (49 U.S.C.A. § 1382 (1963).

In sum, what REA seeks to perpetuate is a pattern of egregious anti-competitive conduct, featuring a number of per se violations of the antitrust laws, such as price fixing, concerted refusals to deal and an outright division of the market among competitors. In the absence of Board approval, such conduct would be highly illegal and would subject the participants to severe criminal penalties.

In striking these monopolistic practices down, the Board has done no more than find REA's case wanting under the very rigid standards required by law of regulatory agencies in such cases. FMC v. Svenska Amerika Linien, 390 U.S. 238 (1968).*/

The monopoly aspects of this case alone are sufficient to distinguish it from the Northeast Airlines case upon which REA relies so heavily. (REA Brief, pp. 27-31, 37, 46 and 48) (Also, it should be noted that Northeast Airlines, as a certificated airline, had assumed certain burdens as well as benefits under the Act, whereas REA, as a non-certificated indirect air carrier without any form of license or even an Operating Authorization, occupies a totally different position.) (See Section IV-B, infra.)

It is alleged that this highly anti-competitive arrangement uniquely

---

*/ In the Svenska case, the Supreme Court held that once an antitrust violation is established, that alone would normally constitute substantial evidence that a challenged agreement is contrary to the public interest. Furthermore, the Court held that in order for an agency to depart from the basic policies of the antitrust laws, clear and persuasive countervailing evidence must be found that requires such a departure. (390 U.S. at 245-46) As we shall see, however, all the evidence here, or certainly the weight of it, points to an adherence to basic antitrust principles in the public interest, rather than a departure therefrom.

benefits a large number of shipments. These allegations, however, are totally incorrect.

First, virtually all of REA's shipments receive a service totally indistinguishable from regular air freight, and hence derive no benefits at all from "air express." (See Section IV-C, infra.) REA itself acknowledges as much when it describes the air freight forwarders as its "arch competitors," even though the fowarders allegedly do not provide "air express" service as such. (REA Motion for Stay below in the Service case, dated May 24, 1974, p. 3; JA-834.) Many of the alleged unique qualities of air express service, while they look fine on paper and in theory, unfortunately for REA do not translate into public benefits. The repetitive statements, for example, that REA provides pick-up and delivery service, that its shipments are individually handled, that its shipments are tendered on a next-flight-out basis, that air freight forwarders, on the other hand, allegedly hold for consolidation and that REA's traffic receives the much touted priority on board the aircraft over air freight traffic, would seem to indicate that air express therefore is a faster service than alternative air freight services of the airlines and their air freight forwarders. One insurmountable fact, however, found by the Board and supported by substantial evidence of record, sweeps away all of these assertions, and that fact is that air express service is not faster than these other services. (See Section IV-C, infra.) And one good fact is worth more than any number of theories. As we shall demonstrate, the Board found it necessary to reject other claims of uniqueness, as well.

Second, the balance of so-called "air express" traffic, found by the Board to consist of a small number of shipments (Supplemental Opinion and Order 74-5-25, Service case, p. 4, JA-789) and estimated by expert witnesses at the hearing at .1 of 1% of the total (Tr. 2402)*/ consists of true emergency type traffic actually requiring a next-flight-out service. But neither is this traffic uniquely benefited by REA's service. Rather, it has heretofore been accommodated by numerous air freight forwarders who offer expedited next-flight out, door-to-door air cargo services (Tr. 1382, JA-1886; Tr. 2259, JA-1975; Tr. 2293, JA-1981; and Tr. 2337-38, JA-1986) and by the airlines' counter-to-counter next-flight-out service (EX-1, JA-1352; Tr. 1385, JA-1385; Tr. 2462, JA-1994; and Tr. 2645, JA-1996). REA's own belated attempt under separate tariff to offer a similar high expedite service merely duplicated the foregoing services. (For the details see pp. 18-22, infra.) The fact that REA found it necessary to add a special "next-flight-out" service indicates, of course, that its regular "air express" service was lacking in that respect, and indeed no different than the regular air freight services of others.

This very small volume of traffic will also be accommodated in the future by the new service that the Board has ordered. That latter service has not been provided by REA in the past. (See p. 19, infra.)

---

*/ All references to exhibits or transcripts herein are to those in the Service case, unless otherwise noted.
AFFA inadvertently failed to designate this particular page of the transcript for inclusion in the Joint Appendix. Accordingly, it is attached hereto as an Appendix.

In fact, as we shall demonstrate and the Board has found the only advantage offered by "air express" is a lower price (as distinct from a lower cost) of service for certain shipments, generally 50 lbs. or below. (AFFA-700, JA-1254.) But, as will appear, infra, at pp. 12-15 of this Brief. the Board found on substantial evidence that even that single advantage would evaporate one way or another should air express be continued. And in any event, the Board further found on substantial evidence that the only arrangement acceptable to REA would constitute a regulatory nightmare that could not be countenanced in the public interest at any price.*/

The historical (but untenable) "low price" advantage, of course, explains the fact that many shippers support a continuance of "air express," notwithstanding a lack of any meaningful service advantages.

REA then attempts to establish as a main cause of its problem the action taken by the CAB in terminating its air express authority. However, reference is made to REA's acknowledgement that its surface traffic has declined from 53 million shipments in 1966 to only 15 million in 1971 (REA Brief, p. 47), and to its further statements that its economic troubles are due to the surface side of its business (Id. at 46 and 47). These statements are utterly inconsistent with its basic premise, however, that its problem

---

*/ One demand made by REA is that it be given the power unilaterally to determine the price to be paid by it to the airlines for their services. (REA Brief, p. 15, Tr. 920-21, JA-1841-42; Tr. 870-71, JA-1837-38). It would be pleasant if everyone had this ability, but hardly feasible. And even if REA could dictate its own costs, it would still not be satisfied. (Tr. of Oral Argument 19, JA-2024).

is the Board's failure to infuse upwards of $50 million into its system by decision in the Rate case (REA Brief, pp. 22 and 50).

In fact, REA's economic problems stem from pervasive and long-term trends in the surface transportation business over which the CAB has no control. Specifically, REA's surface business originally and for many years was built around the express car on the passenger train. Such service at one time most probably blanketed the nation more than any other mode. Today, however, we all know that passenger rail service has all but disappeared, as well as less than carload rail freight service. (REA-T-9, pp. 15, 16, JA-1684-85). At the same time, a jet age air freight service has developed. Faced with these changed facts of life, REA was forced to convert its then unique surface operation to one built on motor carrier service. (Order 73-12-36, p. 35, JA-698). That service, however, is today widely available from many others as well as REA. For reasons of changed technology, therefore, REA lost whatever uniqueness it may have had, and the scope of REA's service has become a relic of the past as found by the Board. Significantly, REA's future cannot reasonably be assured no matter what governmental action is taken, including action of this Court.

In a later section of this brief, we shall expand on the foregoing by directing this Court's attention to not only substantial, but overwhelming, evidence in the record in support of the Board's finding that air express service is no longer unique in any significant respect and hence should be terminated in the public interest.

Initially, however, we will first respond to certain novel and wholly

unfounded legal contentions raised by REA and supporting intervenors.

IV. ARGUMENT

A. The CAB's Decision To Decide The Service Case Prior To The Rate Case Was Within The Board's Discretion And Did Not Constitute Legal Error.

REA and its supporting intervenors make much of the alleged fact that the Board was in no position to decide the licensing question in the Service case without conducting a full-fledged formal rate investigation which met in the last detail the formal statutory requirements for such proceedings in the Federal Aviation Act of 1958, as amended.

The result that REA would have this Court reach is totally unworkable and would constitute an undesirable and unwarranted encroachment on the Board's flexibility in setting its own docket. REA would turn every licensing case into a full blown rate case, something that would at least double unnecessarily the workload of the Agency, and hence would have a severe and adverse impact on the Board's calendar and the public interest. The customary practice of the Board to the contrary over the years without challenge suggests the invalidity of REA's position.

It is a fundamental principle in Administrative Law that administrative agencies, as do trial courts, have almost complete discretion over their own dockets and procedural calendars. United Air Lines v. C. A. B., 228 F. 2d 13 (D. C. Cir. 1955); Davis Administrative Law Treatise, § 8.12 (1958).

The decision of the Board here to institute two separate investigations, one concerning the need for air express service, and the other

concerning certain rates suspended pursuant to normal tariff filing procedures was entirely within the Board's broad discretion. In fact, the soundness of this rule is amply demonstrated here.

It must be recalled that the entire REA question was opened up by the filing of an Air Express Tariff jointly by REA and the airlines whose purpose was to drastically alter the status quo insofar as REA is concerned*/ primarily by the publication of new low rates for larger shipments that undercut the rates of the air freight forwarders. Since the Board had not reviewed the air express licensing question for a number of years, it decided to simultaneously institute an investigation of the need for air express service. (Orders 70-7-109, Docket 22387 (Rate case), and Order No. 70-7-110, Docket 22388, Service case (JA-174 and 181).

Under the Act, The Board's power to suspend REA's drastically changed air express rates was limited to a maximum of 180 days. (§ 1002 (g), 49 U.S.C.A. § 1482 (g) (1963)) This was a limited enough time for the determination of the Rates case alone. Even more, the complex Board licensing proceeding, which involved the need for a continuance of nationwide "air express service," normally by itself could have been expected to take substantially more than the 180 days available in the Rates case to decide. In fact, from beginning to end, the Service case alone took four years. A combined Rates/Service case would obviously have taken even longer.

---

*/ Interestingly enough, REA now claims that the Board should authorize a return to the status quo by suggesting that it has had no real problems in its air express operations. See REA Brief, p. 50.

Thus, the bifurcation of the REA matter into two investigations was a perfectly rational decision. In fact the Board had no choice. Otherwise, absent an extension of the tariff under investigation, which is never a certainty, the loading of the Rate investigation with the licensing issues would have seriously compromised, and in fact precluded any possibility that the Board could complete its investigation of the suspended rates within the statutory 180-day period.

While subsequently REA and the airlines agreed to extend the effective date of the tariffs until final Board decision in the Rate case in order to permit a more convenient schedule for all parties, significantly, at no point did REA seek to consolidate the Rate and Service cases until after a final adverse Board decision had been rendered in the Service case. Certainly, there was no such attempt in the intervening period between a favorable report from the Administrative Law Judge until final Board decision. The economic facts of record in the Service case became inadequate for Board decision in REA's view only after the Board had reached a decision adverse to REA.

There was, and is, no need to finally decide the Rate case in order to render final decision in the Service case, as the Board has done. The fine tuning that would there be necessary under the statutory scheme for rate cases is simply not necessary in a licensing case. What was necessary for purposes of the licensing case was in fact done. The economics of "air express" both in its own right and by comparison to other alternative services (Tr. 183, JA-1782; Tr. 382-84, JA-1802-04) was in fact thoroughly

litigated. This is not surprising in view of the fact that it was specifically an issue at the outset whether air express service should be continued, modified in any manner or terminated (Order 70-7-110, JA-181). Any party was thus totally free to explore alternatives to REA's service and the comparative economics at any stage of the proceeding with exhibits or testimony, and, in fact many parties did so (AFFA-IR-16, JA-1230; AFFA-900, JA-1256; PA-T-3, pp. 7-9, JA-1540-42; Tr. 96, JA-1781; Tr. 372-93, JA-1792-1813; and Tr. 538-41, JA-1817-20). Indeed, one of three main points discussed in AFFA's principal Brief in the Service case dealt with AFFA's own proposed alternative high expedite service for the minuscule percentage of air express traffic requiring special service (Brief of AFFA to Examiner Keith, January 21, 1972, Sec. III-B and Appendix B, JA-314-24). The foregoing materials consume 11 pages of AFFA's Brief.

The long-standing huge losses reported by REA (Order 73-12-36, p. 12, JA-675), at least part of which could reasonably be attributed to air express traffic, and the fact, subject to the Board's official notice, that airline "air express" revenues, or 40 percent of REA's costs (AFFA-408, JA-1253), have been virtually frozen since 1970 during times of unparalleled inflation (Brief for Airline Intervenors, pp. 21-22), plus the fact that both REA and the Airlines conceded that their air express rates were "so darn low" as to be not "anywhere near to being reasonable" (Tr. 926, JA-1843; PA-402, p. 1, JA-1534), certainly constituted further substantial evidence that the economic prospects of air express service, vis a vis other services, were dim indeed.

The Board thus had the substantial evidence cited above and more upon which to make findings of the comparative economic viability of REA's service vis a vis proposed alternative services, and weighed that determination in the scales in deciding the ultimate need for a continuation of air express service in the public interest.

Moreover, the Board was entitled to utilize its general knowledge of, and expertise in, air cargo economics in deciding the ultimate economic issue, and to apply such knowledge in assessing and evaluating the operational natures of the comparative services examined. For example, the airlines, though pressed, could never satisfactorily explain why the costs of an air express shipment should be any lower from the airlines' standpoint than for an identical air freight shipment in the same market handled similarly on the same aircraft. (Tr. 183, JA-1782; Tr. 382-84, JA-1802-04.) Yet the airline price is totally different: $2.40 for a 5-pound New York-Columbus, Ohio shipment in air express, for example, versus $10 or more for an identical air freight shipment. (See generally AFFA-403, JA-1247 for other examples.) The Board knew the economics of small air freight shipments quite well, having concluded a formal investigation of the cost of such service as recently as August, 1973 (Minimum Charges per Air Freight Shipment Case, Order 73-8-10, Docket 24555) and it was certainly entitled to draw on its experience in that case in evaluating the economic prospects of a continued air express service. The Rate case would at most merely have fine tuned the knowledge thus already possessed.

In any event, the Board specifically found on the basis of a record

that included the foregoing evidence that one necessary condition precedent to a continuation of air express would be an expansion of traffic volume in order to lower alleged unit costs to former levels. The Board cited REA's request for expanded authority and for lower rates on larger shipments in confirmation of its finding (Order 73-12-36, pp. 25-27, JA-688-90). Later, the Board found on the basis of the record that the required expansion in traffic volume could not be accomplished, however, for the reason that any future service would be required to return fully allocated costs to the airlines, which would eliminate the low rate advantage currently enjoyed by air express, and which in turn would price the service completely out of the market. (Id. at 27-28, JA-690-91).

Thus does substantial evidence in the Service case support Board findings on the economic issue, irrespective of the Rate case.*/

REA itself recognizes the lack of any real need for the Board first to decide the Rate case in various statements that appear throughout its Brief. These statements indicate REA's view that while the Administrative Law Judge in the Service case was free to decide the licensing question on the basis of "the available economic data" in the record of that case alone (p. 35), the Board was not similarly free to overturn the decision of the

---

*/ The fact that REA itself was unable adequately to articulate the economic issue in either the Rate case for the purposes of that case or the Service case for present purposes did not detract from the Board's ability to use both the substantial record evidence of others and its general knowledge of air cargo economics to arrive at a lawful decision on the REA licensing question in the Service case.

Judge and reach a contrary result on the basis of the same data. Thus, REA's puzzling statement that:

> Since the Board opted to 'moot' rather than decide the Rate case, it was in no position to contradict these * * * exhaustive findings [of the Judge in the Service case] based on comparative economics * * * . (Ibid.)

REA also refers to the Judge's findings in the Service case that there are "substantial economies" inherent in air express service, which in turn we are told was based on a "comparative analysis of fully allocated costs of service" (p. 58). On the next page, REA notes that the Judge in the Service case looked "long and hard at the economics of air express * * * ." REA then concludes that the Judge made proper determination of the licensing question in the Service case on the basis of the "economic evidence" in the record (p. 60). Please note that this is not a case, therefore, where REA, having received an adverse Board decision, has merely changed its legal horses in midstream in order now to attack with consistency a decisional process utilized by Board and Judge alike, but instead it is clear that REA still to this moment believes that what was proper for the Law Judge was improper for the Board. We submit that REA is correct that the Law Judge properly made his licensing decision on the basis of substantial comparative economic evidence in the record, and we also submit that the Board properly made its decision on the same basis. The fact that the Board overturned the Judge is irrelevant. It thus seems apparent that REA's "heads I win, tails you lose" theory of the legal sufficiency of the evidence obviously has no foundation in law.

Finally, it must be recalled that the Board was, and is, unable to decide the Rate case because of deficiencies in the record in that case attributable to REA. (Order 74-5-25, p. 9, n. 13, JA-794). As a participant in that proceeding, AFFA can attest to the fact that the Law Judge practically threw out the procedural rule book in order to accommodate REA and accord it more than a full measure of due process. It would indeed be a surprising turn of events if REA were now to be allowed to take advantage of its own omissions in the Rate case as a means of prolonging its Service monopoly.

B. REA's Service Has Not Become Legally Embedded In The Air Transportation System In Any Manner That Warrants Its Continuance.

Both REA and certain shipper parties argue on brief that they have somehow acquired a vested interest in "air express" service as performed in the past and at the rates offered. Much reference is made to Section 404 (a) of the Act, 49 U.S.C.A. § 1374 (a) (1963 and 1974 Cum. Supp.), which imposes the burden of providing adequate service to the public on certificated carriers in exchange for the benefits of regulation, specifically restrictions against the entry of new competition and reasonable assurances of adequate returns on investments for the service required.

In fact, the Board has merely suffered the existence of the highly anti-competitive air express monopoly in REA for a number of years. (Order 73-12-36, p. 33, JA-696.) And REA as an indirect air carrier (non-certificated pursuant to Section 101 of the Act, 49 U.S.C.A. § 1301 (1963)), has no

obligation whatsoever under Section 404 to provide any service at all.

REA's argument, if carried to its logical conclusion, would freeze the services offered in the various regulated industries no matter what the economic facts of life might be at any given time. One has only to refer to such notable examples as the lawful termination of the rail carriers' obligation to furnish passenger train service, or the total cessation of inter-urban rail passenger and freight service by hundreds of companies in the 1930's and thereafter as a result of changed economic circumstances, to understand the error in REA's position.

Nor is there an obligation on the part of the certificated airlines to continue anything that they either alone or in conjunction with REA have provided in the past.

First, as to the 99.9% of traffic that is indistinguishable from regular air freight (pp. 6-7, supra), the provision of regular air freight service entirely satisfies the requirements of Section 404 (a) of the Act. Regular air freight service, as provided by the airlines and the air freight forwarders, is plainly adequate as the Board has found, and as detailed in Section IV-C, infra.

Second, as for the remaining .1% of 1% (true emergency traffic), there is no unique air express service provided by REA or the airlines that the Board or this Court could order continued by restoration or continuance of the status quo. What the Board has prescribed it has in fact found lacking, that is, an airport-to-airport next-flight-out service open to all at presumably moderate rates. (The airlines have generally filed at 130% of regular

air freight rates. Certainly REA has not provided that service in the past.*/ The only true emergency type high-expedite service currently available from REA is a Johnny-come-lately service that is basically no different from either a service or rate standpoint than premium next-flight-out air freight services provided nationwide in the past by the airlines and forwarders.

The facts, taken from officially filed tariffs cited below, are as follows:

REA's high expedite service, like that of the forwarders, is door-to-door. While labeled a "guaranteed same day service," the tariff provides that the special premium charges assessed will be refunded if the "guaranteed" service is not rendered. Moreover, unlike the forwarders' service, REA's is only available in a few of the largest (twelve) major markets. And no service is available after 2:00 p.m. at East Coast and 7:30 a.m. at West Coast cities.

The forwarders' high expedite service, on the other hand, is basically available systemwide, to the same extent that its regular nationwide service is available, and there are no time restrictions. For these and perhaps other reasons, the service is generally defined as involving special disptach for pick-up and delivery and tenders to the airlines for "earliest

---

*/ Thus, the Board's finding that notwithstanding REA's priority on the aircraft, air express is generally able to deliver a shipment no faster than a forwarder can in regular air freight service. (Order 74-5-25, p. 4, JA-789.) See EX-1, JA-1352; Tr. 1385, JA-1889; Tr. 2642, JA-1995; and Tr. 2646, and Section IV-C-(1), infra, for references to supporting evidence.

arrival" at destination. Door-to-door, airport-to-airport, door-to-airport and airport-to-door services are available. The airport-to-airport services of a forwarder would include the handling of required transfers between airlines where no direct service is available. The forwarder generally commits to segregate high expedite shipments from other traffic for the required special handling. In view of the fact that the forwarders generally provide a next-day delivery in their regular service at regular prices (Section IV-C-(1), infra), it may reasonably be concluded that the forwarders consistently provide a same-day delivery in their high expedite service at the premium prices paid, especially in the major markets where a plethora of daily flights is offered and where REA's only high expedite service is available. As in the case of REA's service, premium charges are generally refunded in the case of non-performance.

The third type of high expedite service available is the airport-to-airport small package service of the airlines. This service is based on the "next scheduled direct flight." The traffic in fact moves with passenger baggage at premium charges. A portion of the charges is refunded if the service is not performed. These services are generally available over the entire system of each airline

Set forth below in Table I are comparative rates for the foregoing high expedite services, as well as the tariff citations applicable not only to the rates but the services as discussed above as well.

Table I

Comparison of REA, Air Freight Forwarder and Airline High Expedite Rates

	New York to Los Angeles (50 lbs.)	New York to Houston (50 lbs.)
REA "Same Day" Service	$63.30	No Service
Shulman Sky Cab Service	$90.50	$85.50
Airborne Special Service	$59.63	$53.26
Emery VIP Service	$87.03	$77.21
Jet Special Service	$63.25	$58.10
Airlines Small Package Service	$30.00	$25.00

Note: All rates are door-to-door except the Airlines Small Package.

Tariff Sources: Air Tariff Publishers, Inc., Agent, CAB No. 140;
Miano, Agent, Air Express Tariff, CAB No. 1;
Emery Air Freight Corporation, General Commodity Tariff, CAB No. 38; Rules Tariff, CAB No. 45, and Pick-up and Delivery Tariff, CAB No. 62;
Shulman Air Freight, Inc., Sky Cab Tariff, CAB No. 12;
Airborne Freight Corporation, Rules Tariff, CAB No. 21; General Commodity Tariff, CAB No. 39; and Pick-up and Delivery Tariff, CAB No. 37;
Jet Air Freight, Rules Tariff, CAB No. 1; General Commodity Tariff, CAB No. 18; and Pick-up and Delivery Tariff, CAB No. 13.

The use of these and other forwarder and airline services and their acceptability to the shipping public and the non-acceptability of regular "air express" service is detailed at pp. 27-28, infra.

Thus, it is clear that what REA and the shippers want continued under Section 404(a) cannot be a unique high expedite next-flight-out

service of REA because such does not exist, as indicated above. Rather, it appears that what they want is simply to continue REA 's regular air freight type "air express" service at below cost rates. To embed that in the air cargo system would clearly be discriminatory, would offer nothing unique and would patently be contrary to the public interest, however, as the Board has found on substantial evidence.

By the same token, what the Board has prescribed for the future cannot be continued by this Court or by the Board upon Order of this Court to maintain the status quo because it has not been offered in the past by REA and is not currently being offered by REA. As the Board has said, the new service contemplated by it, unlike the old REA air express service, will assure the truly fast deliveries found lacking in REA's regular air express service today. (Supplemental Opinon and Order 74-5-25, pp. 4-5 and 10, JA-789-90, 795.) REA totally misses the point, therefore, when it asserts as legal error the Board's alleged failure to "replace" air express with the new priority service (REA Brief, p. 61), since it is, of course, impossible to "replace" something that does not and never did exist. */

---

*/ REA attempts at p. 63 of its Brief to raise an Ashbacker argument. (Ashbacker Radio Co. v. F. C. C., 326 U. S. 327 (1945).) However, for basically the same reasons noted above, Ashbacker is totally inapposite to the current circumstances, and REA has in fact been accorded due process and had full opportunity to explore alternatives to its air express monopoly on a comparative basis.

To begin, Ashbacker has application only in an adjudicatory situation. Here, the Board was clearly dealing with classes of service. Thus, no

(footnote cont'd p. 23)

C. The Board's Findings That REA's Service Is Not Unique, And Hence Should Be Terminated As Not In The Public Interest, Are Supported By Substantial Evidence.

(1) Elapsed Times

Table II below shows the substantial evidence upon which the Board's findings that air express is not faster than air freight were based. It appears therefrom that the service for both "air express" and for "air freight" as performed by forwarders may be loosely defined as a "next day" service. Hence, REA's service is not unique.

---

*/(footnote cont'd from p. 22):

applications in Docket 22388 for the old style air express service as embodied in the current air express agreements were granted. All were denied.

The Board determined, in addition, that the airlines are obligated to provide a new style priority airport-to-airport air freight service theretofore not available which would be open to all to accommodate the extremely limited number of cases where an expedited next-flight-out service is truly needed. The finding that this new class of service is required, likewise, is of a totally non-adjudicatory nature. The Board has made it quite clear that, once this new class of service is created, it should be open to all shippers and indirect air carriers alike without limitation.

Moreover, because this new class of service is something that the Board felt was and will be needed irrespective of the continuation of REA's present operation, there is in any event no mutual exclusivity as between the two services as required by Ashbacker. (326 U. S. at 333)

Table II

Comparison of Air Freight Forwarder
and "Air Express" Service in
Terms of Elapsed Times

A. AFFA survey of traffic of participating member forwarders. (AFFA-101, JA-1238.) Covers all markets served, including secondary markets manned by agents; figures based on 10% samples of February or March, 1971, traffic, except WTC, which was a 2% sample. (See additional direct oral testimony of Witnesses Rabitto, Bramer, Hechteman, Hennessy and Massa appearing in Vol. XVII of the Transcript.) Pick-up or delivery service provided for 98.5% of all shipments. (AFFA-IR-7 (2d rev.), JA-1222; AFFA-IR-9 series, JA-1223.)

Forwarder	% Same Day	% Next Day	% 2nd Day	% 3rd Day or More
Airborne	3.0	53.0	33.0	11.0
Air Land	0.4	55.5	22.6	21.5
Novo	5.6	54.6	36.2	3.6
Profit-By-Air	1.1	60.8	25.3	12.8
Shulman	1.1	70.1	18.3	9.6
WTC	---	66.7	32.3	1.0

B. REA survey of "air express." (REA-351, JA-1603.) The survey covers shipments delivered only at major terminals and only on one day. (Ibid; Tr. 699, JA-1833.) Pick-up or delivery service provided for only 79% of all shipments. (Tr. 655, JA-1825.)

% Same Day	% Next Day	% 2nd Day	% 3rd Day or More
7-19[1/]	47-72[2/]	18-35[3/]	4-22

1/ Range figures allow for the exclusion of some traffic in the 6 to 12 hour category since traffic tendered after noon could well have been delivered next day.

2/ Range figures allow for possible inclusion of some 6 to 12 hour traffic (see note 1 above) as well as some 24 to 36 hour traffic, since the latter traffic might be included in this category. Shipping patterns would normally exclude 36 to 48 hour traffic.

3/ Range figures allow for possible inclusion of some 24 to 36 hour (see note 2 above) and some over 48 hour traffic.

C. REA "shipper" survey of "air express" and air freight forwarder and airline air freight service. (REA-352, JA-1606.) Survey covered markets selected at random and include major, intermediate and minor points. 100% of traffic door-to-door. Sample included only .00002 of REA's annual shipments and only .00005 of forwarder annual shipments. (AFFA-SR-1, p. 4, JA-1285.)

	% of shipments (unweighted) delivered within the following number of business days:					
	1	2	3	4	5	6
Air Freight Forwarder Shipments						
Non cumulative	35%	53%	10%	1%	1%	---
Cumulative	35%	88%	98%	99%	100%	---
REA Shipments						
Non cumulative	46%	42%	9%	2%	1%	1%
Cumulative	46%	88%	97%	97%	99%	100%

Note: Numbers may not add due to rounding. Forwarder shipments reported to REA as "unreported" disregarded notwithstanding actual performance data as reported by Emery at Tr. 2670, JA-2006. Sources include EAF-R-T-6, p. 2, JA-1350; Tr. 2065, JA-1966 and Tr. 2113, JA-1973, in addition to REA-351, JA-1603.

The above data are biased in favor of air express.

First, as indicated in the Table, a larger percentage of REA's Part B traffic is "over the counter" than is the forwarders' Part A traffic. Omission of either pick-up or delivery service on a relatively greater number of shipments naturally improves REA's elapsed times to a significant degree, particularly with respect to "same day" performance. It can reasonably be concluded from the evidence that a comparison of door-to-door with door-to-door services, etc. would show similar results.

Second, REA's Part B data is limited to the major terminals, whereas the forwarders' in Part A was systemwide, including all major

and minor markets, whether manned by employees or agents. Traffic can be expected to move faster between major cities than over the system as a whole, since the latter would include all secondary markets. (Tr. 681-84, JA-1829-32.)

Third, while REA in setting up the shipper survey arbitrarily selected Emery as one of the carriers in each market, it issued instructions to its shippers to select as the other forwarder in each case only a forwarder who did not make a regular daily-pick-up at the originating shipper's dock. (AFFA-SR-1, p. 3, JA-1284.) On the other hand, REA (and perhaps Emery) most certainly did make regular pick-ups in view of the fact that REA chose its "helpers" in making this survey from a list of its major customers and not from complete strangers. (Tr. 1207-08, JA-1877-78.) Of course, regular pick-ups would enhance elapsed times materially.

Further evidence that "air express" is basically a next day service appears at Tr. 1834-35, JA-1957-58; and Tr. 1812-13, JA-1955-56.

Taking all of the evidence into consideration, it is clear that the forwarders overall elapsed times are at least as good as if not superior to that of "air express."

Similarly, as noted in Section IV-B of this Brief, supra, and as indicated by the volume of same day deliveries in regular forwarder

service (Table II, supra, at p. 24), the service of forwarders at least matches that of REA for the minuscule percentage of total cargo shipments which truly demand an expedited pick-up and delivery, next flight out service. We would note that the myth again asserted by REA in its Brief that the forwarders invariably hold for consolidation and hence do not serve that type of market is completely dispelled by the evidence of record. See, in addition to the discussion in Section IV-B, supra, Tr. 2225, JA-1974; Tr. 2265-66, JA-1978-79; Tr. 2457-58, JA-1992-93; Tr. 2666-67, JA-2004-05. And the high expedite services offered are very popular with the shipping public, as proven by the fact that shippers not only regularly use them, but willingly pay a premium price for them. (Tr. 1382, JA-1886, Tr. 2259, JA-1975; Tr. 2293, JA-1981; Tr. 2337-38, JA-1986-87.)

Moreover, a large percentage of true "emergency" high expedite traffic is handled on a counter-to-counter basis with the shipper and consignee assuring movement from door-to-door in the absolute minimum possible time (Tr. 1042, JA-1852; Tr. 1379, JA-1883; Tr. 1472-73, JA-1924-25; Tr. 1486, JA-1932; Tr. 1499-1500, JA-1934-35; Tr. 1533, JA-1939; Tr. 1583, JA-1941; Tr. 1596-97, JA-1950-51; Tr. 1834-35, JA-1957-58; Tr. 2261, JA-1976; and Tr. 2349, JA-1989.) And with over five hundred (500) airport cities in the nation, there is no area so remote that shippers do not have access to the system for that type of traffic.

In contrast, many shippers choose not even to entrust their true emergency type traffic to REA on a limited airport-to-airport basis, preferring instead to make their own arrangements directly with the

airlines in order to avoid problems experienced while their traffic is in REA's control at the terminal. (EX-1, JA-1352 (Witness Williams); Tr. 1835, JA-1958; Tr. 2642, JA-1955; and Tr. 2646.

It is noteworthy that the forwarders were able to match REA's service in terms of elapsed time notwithstanding the fact that REA is accorded priority for its traffic. One reason is that priority turns out after the fact to be meaningless (except in marketing terms) with respect to 98% of all flights operated (PA-304, JA-1508; Tr. 394, JA-1814.) Second, as just noted in the preceding paragraph, traffic tends to get lost or delayed in REA's ground service, and that can more than offset any speed gained from priority on the aircraft. Third, the forwarders by exerting a special second effort in their ground services are able to blunt the effect of priority, even in their regular air freight service and in many of the cases where freight is actually displaced by express on a given flight. (Tr. 2448-49, JA-1990-91.)

(2) Tracing Capability

Dependability is an equally important measure of air cargo service quality. In this department the forwarders clearly excel. The difference may be attributed to the forwarders' vastly superior tracing capability.

REA's tracing capability is extremely limited. The company does not forward shipping information to downline stations, nor does it require that current handling information and status reports of a shipment

be lodged in a central place in the system. (REA-201, p. 4, JA-1553; Tr. 716, JA-1835; and Tr. 1380, JA-1884; AFFA-RT-2, p. 2, JA-1281.) As REA's witness Dravis stated, "[w]e do very little tracing." (Tr. 676, JA-1828.) Hence, an "air express" shipment can stray or be lost without REA even knowing it until the customer fails to receive delivery. By that time it is usually too late.

The forwarders, on the other hand, have highly sophisticated computerized traffic control facilities and tracing capabilities which allow a shipper to monitor the progress of his shipment throughout its course, and to be instantly advised if a problem has developed so that corrective or alternative action can be taken if necessary in time to meet the shipper's deadlines. (AFFA-R-T-1, pp. 25-26, JA-1278-79.)

These are deep-seated differences. Sophisticated tracing systems cannot be created overnight and are extremely expensive. While REA declined to estimate their cost, a witness for Emery disclosed that the initial start-up cost for its system, which would be smaller than REA's in terms of shipment volume, was $3.8 million, and that an additional $3 million per year is required to operate and maintain the system. (Tr. 2330, JA-1985.)

The critical importance of modern tracing capabilities was underscored by one of REA's <u>own</u> witnesses who admitted on cross-examination that the overall service of the forwarders was <u>better</u> than that of REA because of the tracing capability of the forwarder. (REA Witness Weber, Tr. 1176, JA-1876.)

On the basis of substantial evidence such as this was the Board able to conclude that the "extra quick" transportation service required could best be provided by airline airport-to-airport tariffs open to all and so providing. (Order 73-12-36, JA-663.)

(3) Geographic Coverage

In terms of geographical coverage, the Board's finding that "air express" service offers nothing unique was clearly based on substantial evidence. Sixty percent of REA's off line "offices" did not generate (and hence did not serve) any traffic whatsoever during an entire month surveyed by REA. (AFFA-R-4, JA-1260.) These "offices" as a group produced only 11% of the traffic although they comprise 97.8% of the total number (AFFA-R-1, JA-1258.) (See also AFFA-R-10 and 11, JA-1263-64.) Only a small portion of REA's agents devote their time exclusively to developing air express traffic. (AFFA-R-5, JA-1261.) Moreover, it is quite apparent from the record that REA is in the process of drastically reducing the number of "offices" maintained throughout the country. (Tr. 948, JA-1844; Tr. 1287, JA-1879; Tr. 1937-38, JA-1961-62; EAF-R-26, JA-1301.) Thus, the Board properly found that there will be more concentration of air express traffic in major markets in the future. (AFFA-R-13, JA-1265; Tr. 629, JA-1821.)

In any case, REA's hinterland service is geared to old railroad concepts featuring rigid operating rules through fixed terminals or inefficient, part-time agents. It is, for these reasons, highly ineffective.

(AFFA-R-T-1, pp. 2-9, JA-1269-76; Tr. 1998, JA-1963.) To the extent there is evidence in the record, it indicates a pattern of weekly pick-up or delivery service by REA at hinterland points (Tr. 2091, JA-1967), or "pick-up and delivery" service through a city located several hundred miles away (Tr. 2094, JA-1968), or it involves no pick-up or delivery service at all, with elapsed times for even this limited service measured in weeks (EAF-R-T-4, pp. 3-4, JA-1335-36; EAF-R-T-5, JA-1345; Tr. 2657-58, JA-1999-2000.) REA in fact confesses that its service at off line points is a spotty, hold-for-volume operation typical of surface carriers, and not the highly expedited next flight out service that REA would have us believe. (AFFA-R-15, JA-1266.) There is no contrary evidence --only a bare list of "offices" with no indication of the actual service provided at such locations. (Tr. 2094-98, JA-1968-72.)

The forwarders, on the other hand, are expanding their own hinterland facilities. The larger forwarders actually serve as many cities with exclusive air stations as REA (AFFA-IR-1-A, JA-1200; EAF-R-T-4, p. 2, JA-1334; Tr. 653-54, JA-1823-24.) (66 for Emery, 56 for Airborne and 67 for REA.) In addition, forwarders serve over 400 tariff cities and thousands of markets. */

Of an alleged 283 airport cities which REA claims it serves with salaried surface offices and forwarders do not, the forwarders actually serve 254 as tariff points utilizing air oriented agency arrangements.

---

*/ For example, Airborne serves over 62,800 city pair markets alone under its tariff. (AFFA-RT-2, p. 3, JA-1282.)

(AFFA-R-9, JA-1262.) The few remaining are served by connecting truck service. (AFFA-R-T-1, p. 15, JA-1277.) When the air freight forwarders' expanding off line (beyond airport) service is added to the picture (Tr. 365, JA-1789) the forwarders' service is truly competitive and nationwide in scope. For example, one major forwarder serves 13,000 additional cities through regular offline air/truck service. (EAF-17, Nos. 1 and 4, JA-1295 and 1298), and such offline service constitutes 15-20% of that carrier's total shipments, or in the neighborhood of 2.5 million shipments per year. (Tr. 1338, JA-1880.)

In contrast to REA's hinterland service, the forwarders' terminal-on-wheels concept is air oriented, highly flexible and hence of a very high quality. (AFFA-R-T-2, pp. 2-4, JA-1281-83.) In offline service, the forwarder routinely, as agent, advances charges and otherwise acts on the shipper's behalf in arranging for transportation beyond the terminal area, provides single documentation and billing, presents claims on behalf of the shipper and performs tracing functions (AFFA-RT-2, pp. 2-3, JA-1281-1282; Tr. 2284, JA-1980; Tr. 2296, JA-1983; and Tr. 2323, JA-1984.) That forwarder offline service is effective is admitted by REA. (Tr. 1912, JA-1960.) The airlines recognize that the geographic coverage of the forwarders in the "hinterland" is expanding. (Tr. 365, JA-1789.) Because of this broad coverage, forwarder traffic scatters widely into the secondary markets. (AFFA-124-29, JA-1240-45; AFFA-123, JA-1239; Tr. 2295, JA-1982.) And notwithstanding the obstacles presented (see Section IV-D, infra), forwarders by and large

generate as much traffic in the nation's hinterland as does REA. (AFFA-R-2, JA-1259.) Moreover, the various functions performed by the forwarders offline become the legal responsibility of the forwarder as well when performed under nationwide surface forwarding authority obtained from the I. C. C. */

Thus, REA's surface oriented hinterland service is shrinking in scope while the air oriented service of the air freight forwarders is expanding (Tr. 365, JA-1789). At the same time, the REA service that remains, to the extent that it is operationally effective at all, becomes more and more like that of the forwarders. (Tr. 828, JA-1836.)

(4) Commodity Coverage

Substantial evidence supports the Board's findings that air freight forwarder service is virtually coextensive in terms of commodity coverage, as well. (AFFA-RT-2, pp. 1-2, JA-1280-81.) Forwarders already carry items such as heart valves, emergency drugs, radio isotopes, medical supplies, etc. (Ibid.) To the extent there are any current restrictions, the forwarders represented by AFFA have pledged to lift them. (AFFA-RT-2, p. 1, JA-1280.) The only reason forwarders don't carry certain types of traffic now is not because of any lack of fitness, willingness or ability, but simply because the airline freight rates that the forwarder must pay are not competitive with the giveaway

*/ (Tr. 2284, JA-1980.) Most of the forwarders represented by AFFA have now received such authority.

airline charges for air express. (Tr. 2343, JA-1988.) For example, forwarders are fully capable of providing the service required for live animal traffic. (Ibid.)

* * *

Thus, in view of the foregoing, the Board properly found that "air express" service should be abolished, and if abolished, it would not be missed. */

D. The Board's Decision To Substitute Competition For Monopoly As A Means Of Obtaining Optimum Balance Between Price And Service Was Supported By Substantial Evidence and Constituted A Proper Policy Determination Especially Within The Competence Of The Board And Not The Courts.

The Board stated as an important reason for the termination of air express that it wished to rely upon competition rather than monopoly as a means to providing required cargo service in the public interest. (Order 73-12-36, p. 33, JA-696; Supplemental Opinion and Order 74-5-25, p. 5, JA-790.) As a corollary, it found that the air express monopoly

*/ The record in the proceeding cited by REA at page 17 in the U. S. District Court for the District of Columbia contains no facts contrary to the facts of record here. Rather, the injunctive relief there granted was stipulated to by all the parties, which included the shipper parties to that proceeding, the airlines and REA, none of whom at that time wanted air express service to terminate.

had heretofore impeded expansion of forwarder service into the needed areas, such as secondary and tertiary markets. (Supplemental Opinion and Order 74-5-25, pp. 7-8, JA-792-793.)

In arriving at the policy aspect of that decision, the Board was aided by the evidence of record that permitted it to find that notwithstanding the impediments to expanded service posed by the air express monopoly*/ the forwarders' service had approached, if not surpassed in certain respects, that of REA in terms of speed of service, geographic scope, commodity coverage and general overall quality. (See Section IV-C, supra.)

As a general rule, monopoly breeds lethargy, and this case provides no exception. Under monopoly protection, REA's "air express" service had drastically deteriorated (AFFA-R-15, JA-1266; EX-1, JA-1352). Moreover, it is woefully inadequate in terms of tracing capability (Section IV-C-(2), supra). And instead of adopting modern methods of servicing hinterland points as under the air freight forwarders' "terminal-on-wheels concept" (see p. 32, supra), REA's service is wedded to fixed terminals and methods of operation reminiscent of a long-since-gone railroad era.

---

*/ These consisted primarily of the low price (but not cost) advantage described in this brief elsewhere at page 8, and the marketing but not service) advantage of priority (REA-T-2, p. 3, JA-1682; TR. 714, JA-1834; and Tr. 640, JA-1822). The low price advantage of REA is due primarily to the uneconomical price it pays to the airlines. (Pages 12-15, supra.)

As a result, in the growth oriented air cargo market REA's air express traffic has fallen off precipitously (AFFA-312, JA-1246), and very valuable resources in the air transport system are being wasted, notably, the true priority, next-flight-out, same-day capability of the system. (Section IV-C-(1), supra.)

The Board's finding, therefore, that REA was blocking an improved air cargo service for all types of shippers was supported by more than substantial evidence.

Given the facts of record and three thorough opinions or orders explaining the basis for reversals of its prior findings and policies, it appears beyond question that the Board has met all requisite legal standards which in such cases are to be applied. ABC Air Freight Co., Inc. v. C. A. B., 391 F. 2d 295 (2d Cir. 1968); 419 F. 2d 154 (2d Cir., 1969), cert. denied, 397 U. S. 1006 (1970). The Board has undertaken the careful investigation, found the substantial evidence and enunciated the rational explication required. And unlike the ABC Air Freight case, supra, there is no Board reversal of apparent Congressional policy long decreed in this case. There is only a reversal of certain of the Board's own earlier findings and conclusions. The ultimate regulatory policy decision under such circumstances was therefore exclusively for the Board to make, and this Court may not now properly intrude. (S. E. C. v. Chenery Corp., 318 U. S. 80, 88 (1943).)

CONCLUSION

The Petitions for Review herein should be dismissed.

Respectfully submitted,

/s/ Louis P. Haffer

Louis P. Haffer

/s/ Robert N. Meiser

Robert N. Meiser

HAFFER & MEISER
Suite 607
1730 Rhode Island Avenue, N. W.
Washington, D. C. 20036

Counsel for Air Freight
Forwarders Association

September 3, 1974

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on all parties to this proceeding by mailing a copy thereof to each such party or its attorney in a properly addressed envelope with postage prepaid.

/s/ Robert N. Meiser

Robert N. Meiser

~~September 3, 1974~~

service possibilities; anybody can do that.

Q Now, there were 15 million forwarder shipment, total, for the -- was it -- your members had 15 million shipments last year?

A That is the industry figure.

Q The industry? All right.

We are talking about the industry, really, here.

Of that 15 million shipments this past year, since you surveyed this subject, what percent consists of these highly expedited shipments?

A Well, I would have to make a judgment statement.

Q All right.

A I would say it would probably be about one tenth of one percent.

Q One tenth of one percent?

A Yes.

Q Would you --

A Again, my main answer is that it is a very small amount.

Q I appreciate that. I understand that.

Now, have the forwarders successfully handled this highly expedited traffic up to now?

A Yes, indeed. I think it has contributed to their growth, because it demonstrated a willingness on their part to be -- to establish procedures which were highly responsive

HAFFER & MEISER
ATTORNEYS AND COUNSELORS AT LAW
1730 RHODE ISLAND AVENUE, N. W.
WASHINGTON, D. C. 20036

LOUIS P. HAFFER
ROBERT N. MEISER

MARTIN MENTER
OF COUNSEL

(202) 293-1030
CABLE ADDRESS:
HAFMEI

October 11, 1974

Honorable A. Daniel Fusaro, Clerk
U.S. Court of Appeals - Second Circuit
U.S. Court House, Room 1702
Foley Square
New York, N.Y. 10007

Re: REA Express, Inc. v. C.A.B.
No. 74-1611

Dear Mr. Fusaro:

In accordance with Rule 30(c) of the Federal Rules of Appellate Procedure, I am enclosing twenty-five (25) copies of the final brief of the Air Freight Forwarders Association in the above case.

Copies have this day been served upon all parties.

Sincerely yours,

Louis P. Haffer

Louis P. Haffer

Counsel for Air Freight
Forwarders Association

LPH:jn

cc: all parties